BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

LINDA L. SHEPARD)
Claimant VS.))) Docket No. 210,892
MIDWEST PHYSIATRISTS, P.A. Respondent))
AND	{
CNA INSURANCE COMPANIES Insurance Carrier	

ORDER

The respondent and its insurance carrier requested review of the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes dated May 13, 1996.

ISSUES

The Administrative Law Judge granted claimant's request for benefits. The respondent and its insurance carrier request the Appeals Board to review the issue of whether claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds:

The preliminary hearing Order entered by the Administrative Law Judge should be affirmed.

The Appeals Board finds that claimant has established for preliminary hearing purposes that she sustained personal injury by accident arising out of and in the course of her employment with the respondent on February 15, 1996 while lifting a patient.

Because of the nature of the conflicting evidence, the Administrative Law Judge had to have found claimant a credible witness. The Administrative Law Judge was in the

unique position of observing claimant while she testified and, therefore, able to assess her demeanor and credibility. In this instance, the Appeals Board gives some deference to the Judge's opinion of claimant's credibility. When considering the entire record, including the statements of claimant's friend, Janice M. Kollmai, the Appeals Board agrees with the Administrative Law Judge's conclusion that claimant sustained a work-related accident on February 15, 1996.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes dated May 13, 1996, should be, and hereby is, affirmed.

IT IS SO ORDERED.	
Dated this day of July 1996.	
BOARD MEMBER	

c: Kelly Johnston, Wichita, KS
D. Steven Marsh, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director